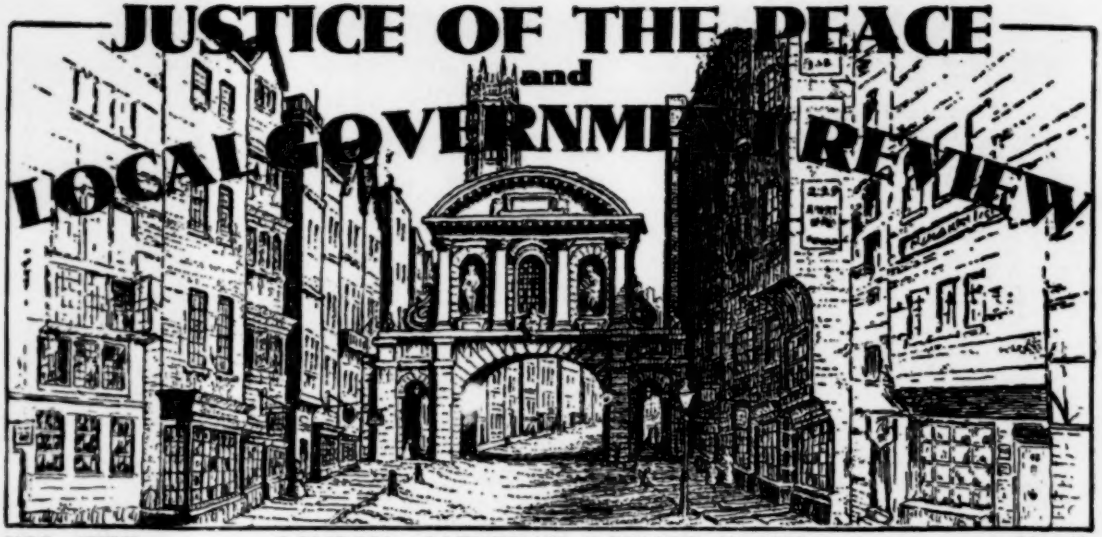

VOL. CXVI LONDON: SATURDAY, OCTOBER 25, 1952 No. 43

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REPORTS

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt* 10 *a.m. Thursday*

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note:* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

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NEW SCOTLAND YARD; Assistant Prosecuting Solicitors on permanent staff of Solicitor's Department. Ages twenty-four—forty. Salary on appointment £602—£760, according to age. On confirmation £865 at thirty, rising to £1,147. (Pensionable). Particulars: Secretary, Room 163, New Scotland Yard, S.W.1.

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Appointment of Second Assistant Solicitor

APPLICATIONS are invited for the appointment of Second Assistant Solicitor. Applicants must have a sound knowledge of conveyancing (including Land Registry practice), and Police and County Court procedure. Salary according to experience and date of admission within A.P.T. VI/VII (£670—£785 per annum), plus the appropriate "London Weighting" allowance.

Superannuable post, subject to medical examination. National Scheme of Conditions of Service apply. The person appointed must devote his whole time to duties of the office and must not engage in private practice.

Application forms, obtainable from the undersigned, to whom they should be returned with the names of two referees, and endorsed "Appointment of Second Assistant Solicitor," Closing date November 8, 1952. Canvassing will disqualify.

GORDON H. TAYLOR,
Town Clerk.

Southgate Town Hall,
Palmers Green,
London, N.13.

WARWICKSHIRE COUNTY COUNCIL

Junior Assistant Solicitor

APPLICATIONS are invited from admitted solicitors for the post of Junior Assistant Solicitor in the Office of the Clerk of the Peace and of the Warwickshire County Council. The commencing salary of the post will be within Grades A.P.T. Va, VI and VII (£625 per annum, rising by annual increments to a maximum of £785 per annum), but the commencing salary of the successful candidate will be fixed according to age, experience and qualifications. No previous local government experience is essential, but a practical knowledge of advocacy and a University (Honours) Degree would be an advantage.

The appointment is subject to the Local Government Superannuation Act, 1937, and the successful applicant will be required to pass a medical examination.

Applications, on forms to be obtained from the Clerk of the Council, Shire Hall, Warwick, must reach the undersigned not later than Monday, November 10, 1952.

L. EDGAR STEPHENS,
Clerk of the Council.

Shire Hall,
Warwick.
October 13, 1952.

CITY OF MANCHESTER

Appointment of Whole-time Female Probation Officer

APPLICATIONS are invited for the appointment of a Whole-time Female Probation Officer.

Applicants must not be less than twenty-three nor more than forty years of age, except in the case of a serving probation officer.

The appointment will be subject to the Probation Rules, 1949 to 1952, and the salary will be according to the scale prescribed by those Rules.

The successful applicant will be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with not more than three recent testimonials, must reach the undersigned not later than November 1, 1952.

HAROLD COOPER,
Secretary of the
Probation Committee.

City Magistrates' Courts,
Manchester, 1.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

VOL. CXVI. No. 43. LONDON : SATURDAY, OCTOBER 25, 1952

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NOTES of the WEEK

Oath or Affirmation

The Court of Criminal Appeal last week found it necessary to quash a conviction at borough quarter sessions, although the Lord Chief Justice described the evidence for the prosecution as overwhelming. The reason was a misunderstanding about the position of the defendant as witness. When the learned Recorder told the defendant of his right to give evidence and asked him if he wished to do so on oath in the witness box, the defendant replied that he did, but that he had an objection on religious grounds, to the taking of an oath. The Recorder, apparently unmindful of the provisions of the Oaths Act, 1888, told the defendant that if he wished to give evidence he must do so on oath. Later, in his summing-up, the Recorder twice referred to the failure of the defendant to give evidence.

Of course the defendant should have been told that if he declined to be sworn on the ground that the taking of an oath was contrary to his religious belief, he could affirm, and that such affirmation would have the same binding effect as an oath.

Thirteen in the Jury Room

An incident which occurred at the Leeds Quarter Sessions, and which was without precedent in the experience of the learned Recorder, must also be something quite new to most people who have practised in the courts.

A man was on trial on a charge of stealing, and the jury retired to consider their verdict. Later it was discovered that there were not twelve but thirteen persons in the room. The Recorder inquired into the matter, and was informed by the foreman of the jury that he had not counted the members present. The unwitting intruder turned out to be a man who had heard his name called and had gone into the retiring room under the impression that this was his jury. He said he was slightly deaf, and had not heard anything that was said. The Recorder said he could not possibly take a verdict in such circumstances, and as the prosecution offered no further evidence, the defendant was discharged.

Naturally, the learned Recorder said there would have to be inquiry as to how it came about that thirteen jurors were allowed into the retiring room. What also may be a matter of legitimate comment is the value of the services of a member of a jury who is hard of hearing and is unable to hear the conversation between members when they are considering their verdict. If he cannot hear and join in at this stage, his vote becomes of little value, and one is also left wondering how much or how little he has heard of the evidence, the speeches and the summing-up. Surely it is in the interest of justice that such a juror should bring his disability to the notice of the court so that the desirability of excusing him from service may be considered.

Natural Consequences

People offer some queer excuses for their offences, and many of them are hard to believe. Recently, a young man of twenty, who was sentenced to Borstal training on a charge of malicious wounding, and who was said to have stretched barbed wire across a main road, gave the explanation that he wanted to stop a lorry in order to get a lift. He must, however, have received sound legal advice, for he pleaded guilty to maliciously wounding an unfortunate motor cyclist who had run into the barbed wire and sustained severe lacerations on his face.

The defendant, who either admitted or was proved to have committed other offences, mostly stealing, must, at his age, have realized that the most probable consequence of his act would be that somebody would get hurt, even if it were true, as counsel said on his behalf, that his intention was to stop a lorry. Whether a jury would have believed that or not is a matter of doubt, but in any case he could hardly have escaped conviction on the ground that he must be taken to have intended the natural consequences of his act.

The well-known case of *R.* v. *Martin* (1882) 46 J.P. 228, is an authority for the principle that there need be no proof of personal malice towards the person injured in order to establish a charge of maliciously wounding or causing grievous bodily harm. In that case the prisoner placed a barrier across a staircase in a place of entertainment and put out the lights. In the darkness there was a panic and a stampede, in the course of which two persons were injured. It was held by the Court for Crown Cases Reserved that the prisoner was rightly convicted under s. 20 of the Offences Against the Person Act, 1861.

Aiding and Abetting

The decision of the Divisional Court in *Sayce* v. *Coupe* (*The Times*, October 11) when the court held, on an appeal by Case Stated, that justices were wrong in dismissing informations alleging offences relating to transactions in uncustomed cigarettes, is instructive on two points of general interest.

Upon the question of the intent to defraud H.M. Customs, the Lord Chief Justice said that where people were found dealing in uncustomed goods and knew that they were uncustomed they were defrauding Her Majesty of the duties due. Intent in these matters was usually a matter of inference. Ordinarily speaking if a man had uncustomed goods in his possession which he intended to use or deal in, and knew that they were uncustomed, he was defrauding the Revenue.

On the information alleging that the defendant had aided and abettted another person, who was not licensed, in the sale of tobacco to him, the Lord Chief Justice said : " It was argued

that because the statute did not make it an offence to buy, but only to sell, a charge could not be preferred against the defendant. On ordinary general principles if a person knew that an offence was being committed, and took part in that offence, he became a principal in the second degree. It was impossible to say that a person who bought did not aid and abet the seller if the latter was committing an offence the circumstances of which the buyer was aware of."

Scarborough

The proceedings of a party Conference are always significant particularly when the party concerned is the party in power—and the Conservative Party Conference at Scarborough was no exception. It is true that from a constitutional point of view the Conference cannot form the policy of the party (unlike the Socialist party whose motions at Morecambe express the official party-view) but at the same time they are influential in assisting the Cabinet in its eventual shape. Readers will recall the target of 300,000 houses a year which owed its inspiration to what the Minister of Housing and Local Government called "an irresistible upsurge of generous emotion" at the Conference at Blackpool two years previously. Of particular interest is the future of development charges under the Town and Country Planning Act, 1947. Mr Macmillan would in no way commit himself on this topic at the Conference saying that the Ministry would gain great advantage from the discussions but it is now strongly rumoured that the Government will abolish land development charge altogether and Mr. MacMillan is said to believe that it is better dead than merely amended. An atmosphere of urgency is lent to the decision due to the fact that payment of compensation from the £300 million fund for loss of development values is due to begin in 1953. The course of repealing Parts VI and VII of the Act of 1947 which deal with the £300 million fund and development charges and the making of corresponding adjustments in regard to compensation for compulsory acquisition is a course which has the merits of simplicity. It also has the merit of being economical and anti-inflationary as well. Nevertheless such a course does involve certain complications over the problem of compensation and betterment which the 1947 Act was devised to improve. However, whatever the difficulties, the development charge has been condemned in round terms as a clog on valuable development and one speaker went so far as to refer to the acquisitive aspects of the Act as "legalized larceny." Another said that there should be rules and regulations for valuation instead of guess work and pressed for a right of appeal from a district valuer's assessment. Undoubtedly the process of valuation is very much a matter of opinion and conjecture and the construction of a body of valuation principles would have something to commend it although the task would be far from simple if indeed it were possible.

Mr. Macmillan would not commit himself on the question of amending the Rent Acts but it appears that there must soon be alterations here if only because of the substantial annual wastage of houses due to the inability of their owners to keep them in repair. The problem fairly bristles with difficulties both political and technical.

Perhaps the greatest measure of disagreement manifested itself at this Conference when a measure calling for a government committee on the new towns was discussed. The mover was very critical in particular of the relationship of the new town corporations with existing and adjacent local authorities. Undoubtedly very many improvements could be made in this direction but as the Minister pointed out just such an inquiry was in progress under his auspices. We do not think that public opinion will generally concur with the speaker who thought the motion too restrained and that the corporations should be wound up forthwith. A great deal of capital expenditure has now been incurred and the schemes must continue albeit under tighter scrutiny than previously.

A Great Parliamentary Draftsman

That the English Bar provides opportunities for varied talents was amply illustrated by the life of Sir Maurice Gwyer, whose death at the age of seventy-four we record in these columns with the greatest regret. Although he was not a conspicuous success at the Bar, Sir Maurice was unquestionably one of the greatest legal draftsmen of this century. In particular he was the legal architect of the Government of India Act, 1935, and so shaped the constitution of that great sub-continent.

Sir Maurice Gwyer, G.C.I.E., K.C.B., K.C.S.I., was educated at Westminster and at Christ Church, Oxford, where he was a Fell Exhibitioner. He took a first in Classical Moderations in 1899, and a second in Literae Humaniores in 1901. In 1902 he was elected a Fellow of All Souls and it is interesting to recall that his election coincided with that of the late Raymond Asquith. Although only one Fellowship was open for competition both Gwyer and Asquith distinguished themselves so much that an exception was made and two Fellowships were awarded. Sir Maurice followed up his academic success by securing a first class in the Bar Final Examination and obtaining the Council of Legal Education's prizes for constitutional and criminal law, evidence and procedure. He was called to the Bar by the Inner Temple in 1903, and was a pupil of the late F. D. Mackinnon (afterwards Lord Justice Mackinnon). Then he went into chambers with the late F. T. Barrington-Ward (a future Metropolitan magistrate) but although he went to the Western Circuit he never acquired an extensive practice at the Bar.

In 1912 he left the Bar to become Solicitor for the Insurance Commission and in 1917 he transferred to be Legal Adviser to the Ministry of Shipping. In 1918 he went back to the Bar where he acquired a certain amount of work in the Commercial Court but this interlude did not last long and in the following year he resumed his official career and became Legal Adviser to the Ministry of Health. On the death of the Hon. Clive Lawrence in 1926 he was appointed Solicitor to the Treasury and King's Proctor and took silk in 1930. In 1933 he followed Sir William Graham-Harrison as First Parliamentary Counsel to the Treasury, and it was in this important post that some of his most distinguished work was accomplished including the India Bill. It was under this Bill, when it became an Act in 1935, that India and Pakistan became independent in 1947.

When in 1937 the Federal Court was established in India Gwyer was made its first Chief Justice, but as the volume of work with which it had to deal in its first years was small he had few chances of displaying his judicial talents and found the most effective outlet for his capacities in his Vice-Chancellorship of the University of Delhi, the influence and standing of which he greatly restored.

Sir Maurice Gwyer made considerable contributions to English legal literature. He edited the twelfth to sixteenth volumes of *Ansons Law of Contract* and Volume I of the same author's *Law and Custom of the Constitution*.

The Training of Mental Defectives

The country cannot afford to maintain persons who are handicapped by mental deficiency or other causes if they can, in one way or another, be made even partially self-supporting.

Much attention has usefully been given therefore to the training of the physically handicapped but, according to an article in a recent issue of *The Lancet*, more could be done in the training of those types of mental defectives who can profit by occupational training as distinct from occupational therapy. It is suggested that the number of mentally defective patients who are now rehabilitated could be greatly increased if ways could be found of lessening the high incidence of occupational maladjustment among those sent on licence to the community. But many physician-superintendents are apparently reluctant to send patients on licence because of the probability of failure. It is extremely costly to maintain patients in institutions where—although they receive various forms of training—it is often not related to work which they might be called upon to perform when sent out on licence because, with few exceptions, institutional policy has not been to return defectives to the community but to segregate them. In the views of the experienced writers of the article in *The Lancet*, large institutions are unsatisfactory as places for training and unfortunately most of the institutions are very large.

An experiment has been in operation for two years at the Darenth Park Mental Deficiency Institution in Kent which should be of great value. There, experimental workshops have been established to learn whether it is possible to train defectives to do such routine repetitive work as is done by normal workers in industry and whether their training contributes to their success. Suitable work, paid for at Trade Union piece rates, has been obtained from two firms willing to sub-contract work to the institution. Records are kept of the output of each person employed and he is paid according to what he earns. All money received from the firms is credited to patients but the patient does not receive in cash more than an average of 6*s*. 8*d*. a week varying from 2*s*. 6*d*. to 15*s*. The balance of the money earned is banked for the patients who are encouraged to save as much as possible to buy clothing, presents for relatives and to pay for holidays and outings. Some of the patients, after training, go out on daily licence and are employed at a local factory; others are employed directly without training as building labourers. All of them seem to benefit by working alongside normal employees and by remaining in company with others whom they know.

Globality and Locality

A mildly amusing mixture of metaphors might describe the consultations between the Ministry of Civil Aviation and numerous local authorities about the proposed extension of Gatwick Airport as growing pains of a shrinking world. Problems of considerable magnitude are as inseparable from progress as talk of war is from thoughts of peace. Consultation ought to be an embrocation but is sometimes an irritant; certainly, it seldom results in the complete satisfaction of all the consultants which would be nearly miraculous, but its use provides opportunities for exposition and understanding which frequently yield material benefits in the co-operative application of ultimate decisions. This airport extension, so far having a somewhat shadowy connexion with complaints of noise and damage to amenities over a wide area around the main London Airport at Heathrow, will not be a case in which local authorities can complain that their unique position as accredited representatives of people importantly affected has been overlooked.

Statutory provision has commonly been made for consultation between ministers, public bodies and representative organizations concerned with the same or different services which have been created, transferred or transformed since the war. Whether such provision has always rested on genuine belief in its merits, or may have been regarded as the biggest practicable concession to the placation of opposition, may be questioned. Some complaints that consultation has been an empty formality probably have substance, though investigation would as probably reveal complainants who are such inveterate obstructionists that the public interest is best served by their circumvention.

There is neither any indication nor expectation that the matter of Gatwick Airport will add another to instances in which local authorities individually, in a group or through an association have seemed unduly reluctant to co-operate with a central department or public body established by Parliament. Reluctance can, at times, be understood but the validity of the reasoning and outlook behind it occasionally seems doubtful for want of scope and vision transcending local considerations. While it is true that the first concern of a local authority should be with local implications, later and final implications from far wider fields, embracing international trade, culture and friendly understanding, may be found to work right down to particular parishes as units in a countless number whose welfare is eventually indivisible.

Detrimental effects are obvious in the vicinity of a hydro-electric scheme disrupting a scene of majestic natural beauty, a large gasholder disproportioning the setting of a delectable cathedral, an arterial road through meadows endowing the clustered architecture of a historic university with mediaeval charm, a training ground for explosive weapons of battle among tranquil moors, downs or dales, a port for international aircraft whose noisy methods of propulsion rend residential quiet, and in connexion with other symbols of change in physical environment engendered by mankind. Benefits derived from those activities in wider areas ranging up to that of the whole country and beyond may be recognized, perhaps grudgingly owing to instinctive aversion from disturbance of settled ways. But whatever degree of recognition is given to the desirability and inevitability of evolution in human affairs in principle, the impact of its application on particular places and people is sure to rouse a measure of local hositility. How far that hostility, not an altogether ill-advised method of forcing reasonable consideration for others into minds purblind to all else than a pet innovation, should be allowed to thwart or modify the practical application of potentially beneficial projects is a question with many answers largely dependent on the circumstances of separate cases.

A local authority should not seem to be aloof from large problems which beset central departments nor from the smaller ones which trouble residents in their area. This may seem to suggest an unfortunate condition of schizohprenia. Actually, it requires an attitude partaking of judicial impartiality in the assembly and sifting of facts, weighing of contentions and statement of reasoned opinions. To a considerable extent, in matters at issue between a central department and the inhabitants of a relatively small district, a local authority can fulfil a useful purpose as a medium for the transmission, with some interpretation, of information about national necessities and local ability and willingness to make a fair contribution in various forms. Two points are abundantly plain. First, that a local authority's views should not be saturated with parochial tints. Secondly, that assiduous care should be exercised, and be seen to be exercised, in the collation and presentation of local reactions. Failure on the first point is conducive to bored indifference, and on the second shakes the local foundation of good government. Success on both will raise the stature of local government.

THE CASE FOR THE ORGANIZATION OF PROBATION COMMITTEES

By J. R. CURBISON, J.P.

One need not be a very keen student of current affairs to realize that the work of probation is one of outstanding importance. Not only has it achieved permanence as a feature of court life but it appears that it will play an increasing role in that sphere as more courts become convinced of its usefulness as a redeeming and socializing factor.

The writer remembers the introduction of the probation system with its limited sphere of operation and the hesitancy with which it was at first greeted by magistrates. Today, by contrast, one has become accustomed to the wide-spread use of the system. With the growth of probation work and the consequent increase in staffs, probation committees through the country carry the onerous burden not only of day to day routine business but are faced with many problems of a policy-forming character in respect of which they have little opportunity of resorting to precedent or to the views of other committees faced with similar problems.

The modern tendency so far as public authorities and parallel organizations are concerned is to initiate some central organization to advise, assist and befriend (to adopt a probation term) members of the individual committees within the organization, so as to enable all committees to function at the highest possible level. Such a central organization possessed of the most up-to-date information and a central office to which all inquiries might be directed would result in experienced guidance and a common fund of information being available at short notice. Most authorities agree that some measure of uniformity is desirable as between the constituent members of any organization. The precise extent of the uniformity, however, may be a matter for some difference of opinion. However, no one would doubt the benefits which have accrued to local authorities generally by the existence of such representative organizations as the Association of Municipal Corporations and the County Councils Association.

At a more specialized level one finds that the special features of the work of local authorities (as carried out by their various committees) has necessitated the establishment of central committees within, for instance, the framework of the Association of Municipal Corporations. In order most effectively to co-ordinate the experience of those entrusted with the administration of the work of these committees at local level it has become customary to convene National and Regional Conferences where full opportunity is given for the discussion of mutal problems and for the exchange of information.

It seems that in this way the most useful type of progress has been and is being achieved. It seems that these organizations should be distinguished from the purely Trade Union type of organization to which we are becoming accustomed ; all sorts and conditions of professional men and women, artisans and the like banding together for the common purpose of obtaining a more or less uniform standard of conditions of service and at least a minimum salary or wage for the particular type of employment. So far as the latter aspect of the matter is concerned in relation to the sphere of probation, the probation service has itself been well served by the efforts of the National Association of Probation Officers and there can be no doubt whatsoever that the Association is recognized by Government departments as fully representative of probation officers. On the other hand, if one surveys the present position in relation to the organization of probation committees themselves, one finds a much less satisfactory state of affairs.

With regard to the training of probation officers, the Home Office Selection and Training Board decides in the main the personel which shall staff the Probation Service generally but probation committees have apparently no direct representation thereon. Again, the Probation (No. 2) Rules, 1952, stipulate further improved scales of annual salaries for probation officers and, without in any way attempting to criticize the adequacy or otherwise of the amount now paid by way of remuneration to probation officers generally, it is hardly in accordance with the accepted principles of good adminstration, let alone justice, to facilitate negotiations of the type from which the said order has emanated, without the views of those who, to some extent, must be accepted as the employing authorities (namely the probation committees throughout the country) having been obtained. It is true that it appears that four members of the Magistrates' Association form part of the national negotiating committee for such salaries and it may well be that from time to time those members are also members of probation committees, but they are not elected by probation committees, nor do they represent them. It is probably literally true to say that in the main, probation committees are first acquainted with revised salaries and conditions by the receipt of a circular, advising them to the effect that they must put the revised conditions into operation.

It should be clearly understood that, beyond any doubt, those interested in the selection of candidates for the Probation Service and those members of the national negotiating committee should receive the thanks of magistrates generally for they have worked hard in the interests of probation as a whole. But having said that it is submitted that the actual voice and opinion of probation committee members thereon should be and can only be ascertained if they are elected by probation committees and one cannot understand why an independent outside body should be asked to appoint representatives to look after their interests. This is especially so when probation committees as a whole appear today to be served efficiently and excellently both as regards members and officials and obviously quite capable of arranging effective representation at any national level. The writer believes that it is only recently that the whole of the country has become organized into area committees and that being so it may well be that the present moment is the right time to look forward to the organizing of those area committees into some central organization of the type enjoyed by other public bodies.

The writer speaks as one who has enjoyed many years both as a member of local authority committees and of probation committees from their inception. He most earnestly commends to those who are interested in the welfare of probation generally the view that it is essential to that welfare to create some central organization which would undeniably fulfil a most useful function and which, moreover, is needed at the present stage of development that the Probation Service has reached. Particularly is this needed because of the growing importance and sphere of influence of the Probation Service.

There is good reason for believing that the standard of probation varies immensely from one county to another and even as between neighbouring boroughs. Although the establishment

of area committees has done and will continue to dispose of the more difficult and unsatisfactory features in "backward" areas, nevertheless there is, it is maintained, still a substantial discrepancy between the various area committees who are without any opportunity of contrasting their policy with that of other similar committees and except for the helpful guidance given by the Probation Branch of the Home Office, have no central body of opinion from which they may seek information and guidance or through which their views may be expressed at national level.

The writer is not sufficiently informed to know whether probation committees as a whole would sanction the intervention of the Magistrates' Association in this matter but there is, no doubt, scope for the view that it may well fall within expressed objects towards the furtherance of which the Magistrates' Association may well feel disposed to give serious consideration.

THE SMALL TENEMENTS RECOVERY ACT, 1838—II

By GRAEME FINLAY, *Barrister-at-Law*

The form of notice of intention to proceed under s. 1 is set out hereunder :

NOTICE of Owners Intention to apply to Justices to recover possession.

I [owner, or agent to the owner, as the case may be] do hereby give you notice, that unless peaceable possession of the tenement [shortly describing it] situate , which was held of me or of the said [as the case may be] which expired [or was determined] by notice to quit from the said , or otherwise [as the case may be] on the day of and which tenement is now held over or detained from the said , to be given to [the owner or agent] on or before the expiration of seven clear days from the service of this notice, I shall on , next, the day of at of the clock of the same day at, at , apply to her Majesty's justices of the peace acting for the district of [being the district division or place in which the said tenement or any part thereof is situate] in petty sessions assembled to issue their warrant directing the constables of the said district to enter and take possession of the said tenement, and to eject any person therefrom.

Dated this

Signed

[Owner or Agent].

To Mr.

This form of notice must be strictly complied with in order to be valid. In *Bowden* v. *Rallison* [1948] 1 All E.R. 841 ; 112 J.P. 283, a notice was held to be invalid because it failed correctly to state the nature of the tenancy and the date on which it was determined. In *Delaney* v. *Fox* (1856) 1 C.B. (N.S.) 166 ; it was held that the notice must state that the person giving such notice is "the owner" or the agent for "the owner" and must also state the place at which the application to the justices is to be made.

The section goes on to deal with the consequences of failure to show the justices why the landlord should not be given possession . . . "and if the tenant or occupier shall not thereupon appear at the time and place appointed and show to the satisfaction of the justices hereinafter mentioned reasonable cause why possession should not be given under the provisions of this Act, and shall still neglect or refuse to deliver up possession of the premises or of such part thereof which he is then in possession to the said landlord or his agent, it shall be lawful for such landlord or his agent to give to such justice proof of the holding and of the end or other determination of the tenancy, with the time or manner thereof, and where the title of the landlord has accrued since the letting of the premises, the right by which he claims the possession."

"Reasonable cause" has been interpreted judicially as meaning some cause which gives a right in law for the tenant to remain : *Shelley* v. *London County Council* [1948] 2 All E.R. 898 ; 113 J.P. 1.

The relationship of landlord and tenant may be proved orally. But if there is a written agreement showing the terms, it must be produced in order to prove the expiration : *Twyman* v. *Knowles* (1853) 13 C.B. 222.

The section proceeds :

"And upon proof of service of the notice and of the neglect or refusal of the occupier as the case may be, it shall be lawful for the justices acting for the district, division or place within which the said premises or any part thereof shall be situate, in petty sessions assembled, or any two of them, to issue a warrant under their hands and seals to the constables and peace officers of the district division or place within which the said premises or any part thereof shall be situate, commanding them within a period to be therein named, not less than twenty-one nor more than thirty clear days from the date of such warrant, to enter (by force if needful) into the premises, and give possession of the same to such landlord or agent."

The words "it shall be lawful" do not give the justices a discretion whether or not to issue the warrant (*Shelley* v. *London County Council*, *supra*) upon compliance with the terms of the Act the issue is a mandatory duty which they must carry out.

The warrant is set out as form No. 3 in the schedule to the Act. Only the police or peace officers of the district may execute it. It seems that if the warrant is not executed within the time limit it may be treated as a nullity and fresh proceedings may be taken : *Fearon* v. *Norvall* (1848) 5 Dow & L. 455. There is no power under the section to postpone the execution of a warrant : *Shelley* v. *London County Council*, *supra*.

Section 1 has three provisions attached to it :

(1) That entry shall not be made under such a warrant on a Sunday, Good Friday or Christmas Day or at any time except between the hours of nine in the morning and four in the afternoon.

(2) That nothing shall be deemed to protect any person on whose application a warrant is granted from an action brought against him by a tenant or occupier in respect of entry or taking possession where the person concerned had not at the time of granting the same lawful right to the possession of the said premises.

(3) That nothing shall affect any rights to which any person may be entitled as out-going tenant by the custom of the country.

Section 2 deals with service of notice of application and provides that this may be served either personally or at the place of abode of the person holding over. The person serving the notice must read it over to the person served and explain its purport and intent. In default of personal service or service at the place of abode the summons may be posted upon some conspicuous part of the premises held over.

Failure to serve a notice properly may result in damages being awarded for trespass (*Cable* v. *Mayers* (1903) 115 L.T.Jo. 445).

Section 3 provides for proceeding by action of trespass where a warrant is improperly detained. The obtaining of a warrant by a person who has not got a lawful right to possession of the premises shall be deemed a trespass even though no entry is made by notice of the warrant.

If a landlord obtains a warrant without having served a statutory notice on the occupier, no action lies under this section if the landlord had a lawful right to possession at the time he obtained it : *Lewis* v. *Gunter-Jones* [1949] L.J.R. 769.

The Act provides (in s. 7) a series of definitions which it may be well to cite at this stage :

" Premises " signifies " lands, houses or other corporeal hereditaments," " landlord " means " the person entitled to the immediate reversion of the premises . . . "

" Agent " is interpreted as meaning " any person usually employed by the landlord in the letting of the premises, or in the collection of the rents thereof or specially authorized to act in the particular matter by writing under the hand of such landlord.

This last expression has been given a special construction in the Act. Only persons who fall within the categories indicated in the definition are entitled to serve the notice under s. 1, *supra*.

In *Bailey* v. *Hookway* (1945) 109 J.P. 69 a firm of solicitors served the statutory notice under the section on behalf of the landlord. They were not persons usually employed by the landlord in the letting of the premises or in the collection of the rents thereof, nor were they specially authorized to act in the particular matter by writing under the hand of the landlord. It was held, therefore, that they were not agents under the Act for the purpose of giving the statutory notice.

Section 5 protects justices and constables from actions or prosecutions for issuing or executing warrants because the person on whose application the warrant was granted had not a lawful right to the possession of the premises whilst s. 6 provides that where the landlord has a lawful title, he shall not be deemed a trespasser by reason of irregularity in applying for a warrant, but be liable in an action on the case for special damage proceeding from irregularity. Under this last section there must be special damage arising from the irregularity or informality complained of in order that the party aggrieved may recover damages : *Delaney* v. *Fox* (1856) 1 C.B. (N.S.) 166 ; (the case where notice of intention to apply for warrant was not in the required form).

Section 7 of the Act of 1838 as indicated, *supra*, defines the word " agent " as signifying " any person usually employed by the landlord in letting the premises or in the collection of the rents thereof or specially authorized to act in the particular matter by writing under the hand of the landlord." As previously noticed the section was strictly construed against solicitors in the case of *Bailey* v. *Hookway*, *supra*. The landlord or his agent as defined above must serve the statutory notice under s. 1, *supra*, and a local authority being a corporation can, of course, only act through its members or officers. It follows from the foregoing that the local authority concerned must by written resolution specially authorize one of its officers, in respect of the particular matter, to institute on its behalf proceedings under the Act. This course would be equally necessary in the case of the town clerk, his deputy or assistant and an assistant solicitor. A housing manager, on the other hand, operating under the borough treasurer might amount on the facts to " a person usually employed by the landlord in the collection of the rents " within s. 7, *supra*, and so not require the special authorization to act under s. 1. In view, however, of the explicit wording of ss. 1 and 7 of the Act it would appear that a general authority given to the town clerk under s. 277 of the Local Government Act, 1933, would not suffice for the purposes of serving a written notice under s. 1 of the Act. A form of special authority would be necessary which might, for example, be worded in the following manner :

" That the town clerk/deputy town clerk, assistant solicitor (as the case may be) is hereby authorized to institute proceedings on behalf of the council under the Small Tenements Recovery Act, 1838, against one AB for recovery of possession of a tenement at . . . "

It remains to consider the position where the tenant or other person in occupation is performing a period of relevant service under the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951. Section 16 (1) (2) of that Act extends the protection of the Rent Restrictions Acts to a " rented family residence " or the ending of a tenancy qualifying for protection under the Act. The period of residence protection is limited by s. 14 to the period of service (or the residue of it if it began before the Act) and four months from the date of ending of it. The security of tenure afforded under the Act applies to the service man's " rented family residence " (s. 14) and this expression is defined as meaning " premises in which the service man was living immediately before the period of his service with a dependant or dependants of his in right of a tenancy at a rent of those premises being a tenancy vested in him or in that dependant or any of those dependants and in which at the time in question during the period of protection a dependant or dependants of his is or are living with or without him in right of such a tenancy of those premises being a tenancy vested in him or in that dependant or any of those dependants."

" Dependant " is defined as meaning (in relation to a service man) : " (*a*) his wife and (*b*) any other member of his family who was wholly or mainly maintained by him immediately before the beginning of the period of service in question " (s. 23 (1)).

" Statutory tenancy " (s. 16 (1) (*b*)) means a right to retain possession of premises after the ending of a tenancy thereof, being a right arising on the ending of that tenancy from the operation of the Rent Restrictions Acts in relation to a person as being or being the widow of, or otherwise related to, the former owner of the tenancy, or a right to retain possession of premises arising by virtue of s. 18 (1) of the Act " (s. 23 (1)).

When considering this matter from the point of view of the local authority various permutations of circumstances can arise in practice. For example :

(*a*) A with the councils consent takes in B and family. A purports to sub-let to B though the council authorize him only to take in B as a lodger. B then proceeds to perform a period of relevant service under the Act of 1951. A and B, refuse to leave. In this case taking into account the definitions of " rented family residence " and " dependant " it would appear that B and family are not protected by the Act as B is not a tenant but only a licensee. Neither, of course, is A protected.

(*b*) A proceeds to perform a period of relevant service. Whilst in the forces he arranges for B, without the council's consent to occupy part of the house. A and B refuse to leave. In this case it seems that A is protected whilst B is not.

(*c*) A performs a period of relevant service during which time the council require possession of the house. There is no irregular occupier in this case ; only A's family are there in the house. In such a case having regard to definitions mentioned in (*a*), *supra*, it would appear that A and his family are protected by the Act. In cases (*a*) and (*b*), *supra*, notice of intention to proceed under s. 1 of the Act of 1838 should be served on the unprotected occupiers. In case (*b*) there appears to be nothing to prevent the council from ejecting B without dispossessing A ; on the contrary A appears to be expressly protected by the Act.

THE ANNUAL REPORT OF THE MINISTRY OF HEALTH

The annual report of the Ministry of Health for the period from April 1, 1950, to December 31, 1951, has been issued in two parts. Part II, which contained the report of the Chief Medical Officer, was published a few weeks ago and Part I which deals with the National Health Service, Welfare, Food and Drugs, and Civil Defence, has been issued recently. The section of the report dealing with the National Health Service will be studied with interest by those who are directly concerned as showing the guidance, and in some respects in control, exercised by the Ministry over the Regional Hospital Boards and the Hospital Management Committees which are responsible for the administration of the service on behalf of the Minister. The cost of the service for the first nine months after its inception was at the rate of £242 millions a year and was increasing so rapidly that it was not surprising that the Government fixed the ceiling for 1951-2 at £400 millions.

The developments in the hospital service have been qualitative as well as quantitative—not only have more patients been enabled to receive treatment but individual patients have often been enabled to be treated better or more comfortably. The Ministry have found the difference to be most marked in the old hospitals where modern equipment has been installed. Many of these hospitals were filled with bedridden people in 1948 but now many of the patients are being rehabilitated and made ambulant once more. As was intended when the Act was passed, these old institutions have changed their character and are recognized locally as real hospitals. It is stated in the report that the relations of hospitals with the public have been reassuring and have fully justified the administration of the hospital service by boards and committees composed of voluntary members. Many hospital management committees, with the encouragement of the Ministry, hold public meetings to foster interest, sometimes accompanied by an "open day." It is noted that gifts and legacies to hospitals increased from £1,700,000 in 1949/50 to about £3,000,000 in 1950/51 and have helped materially to provide all kinds of amenities, and in some cases equipment and services which could not otherwise have been provided from the restricted budgets.

The problem of the chronic sick is still giving concern and the allied problem of the care of those who are occupying hospital-beds because they have nowhere else to go. Hospital authorities have been advised to consider the provision of convalescent and long-stay annexes linked with acute hospitals so as to free hospital beds. Another way in which this problem is being solved in some areas is by the development of geriatric services and the encouragement which is being given to the provision of treatment for old people in their own homes by the family doctor acting, when necessary, in conjunction with the domiciliary specialist services from hospitals and the domiciliary services provided by the local health authorities. Some geriatric physicians, in addition to domiciliary visiting, provide out-patient treatment for those with chronic illness who are on the waiting-list for admission and who would possibly deteriorate if not kept under observation or might even recover without subsequent admission. This is a development which at present only applies in a few areas and should be extended wherever possible. Reference is made in the report to an interesting experiment which is being conducted in one London borough where an advisory health clinic has been opened at which the aged can seek examination and advice aimed at maintaining a good standard of health and so preventing or deferring deterioration. In view of the importance of using both hospital beds and beds in old people's Homes to the best advantage it is urged that co-operation between hospital and local authorities regarding the exchange of suitable patients is essential.

MENTAL HEALTH SERVICES

Turning to the section of the report on the Mental Health Services it is mentioned that the outstanding difficulties are still the shortage of nurses and shortage of beds. Nearly 5,000 more beds could be used if staff could be found. It is, however, very satisfactory to learn that over one half of the patients admitted to mental hospitals are discharged within a year of admission —the average stay in these cases being four to six weeks. This is no doubt due to the increase in the number of voluntary patients and to the notable increase in the development and application of active curative treatments.

DISCIPLINARY ACTION

In view of the suggestions which are sometimes made that doctors, dentists and others employed in the National Health Service do not observe the high degree of professional conduct which was the pride of those formerly engaged in these professions, the section of the report referring to the disciplinary action taken is of interest. During 1951, 1,935 cases of alleged breaches by practitioners of the terms of their service were reported to the Minister; 355 cases related to the general medical services, 825 to the general dental services, 678 to the pharmaceutical services and seventy-seven to the supplementary ophthalmic services. In 876 cases the Executive Council had found that the allegations were not substantiated or recommended no action. In a further 375 cases the council recommended that a warning letter should be sent to the practitioner concerned. In the remaining cases the council recommended further action, including, in 445 cases, withholding an amount from the practitioner's remuneration. There were 154 appeals to the Minister against the decision of the executive councils of which 130 were dismissed.

THE ELDERLY AND THE HANDICAPPED

The principal development in relation to the services for which local authorities are responsible under the National Assistance Act was in the preparation of schemes for providing welfare services for handicapped persons other than the blind. We commend the views expressed in the report that these services can be brought into operation without substantial expenditure of either manpower or money. We hope, this means, therefore, that the employment of another independent body of officials will not be countenanced, but that full use will be made of the staffs already employed in the welfare and health departments of the local authorities.

On the question of the communal care of the elderly the report shows that steady progress is being made. At the end of 1951, 450 small homes, accommodating approximately 12,500 old people had been opened since the end of the war. Six of these homes—three in London and three in the provinces—were new buildings. Plans had been approved for the erection of thirty-five new homes and a further 230 existing premises had been acquired by local authorities for adaptation. The help which can be given by voluntary organizations in this field is commended and it is stated that the value of the power conferred on local authorities by s. 31 of the National Assistance Act, 1948, to contribute to the funds of certain voluntary organizations was again shown by the help given by a number of authorities towards the formation of old people's clubs and the upkeep of meals

services (including meals-on-wheels). Reference is made to the increase in the number of voluntary county and local old people's welfare committees as of great assistance in linking the activities of the voluntary organizations and those of the statutory authorities and by facilitating exchange of information in bringing to old people in their homes the services they require. The aim must be to enable as many old people as possible to remain in their own homes. It is satisfactory to learn, therefore, that the total number of persons in residential accommodation at the beginning of 1952 was 3,765 less than a year earlier.

MISCELLANEOUS

We cannot, in the space at our disposal, deal with this report in detail, and it contains other matters of special interest to those concerned and particularly in connexion with the development of the Civil Defence Services in so far as the Ministry of Health is concerned. These are : (*a*) the taking of measures to deal with casualties and disease ; (*b*) the temporary accommodation and maintenance of persons who, owing to hostile action or threat of hostile action, are made homeless or leave their homes or are refugees or persons repatriated from abroad, until they can return to their homes or can be billetted or otherwise re-housed ; (*c*) the supervision of the health and welfare of persons using public air-raid shelters. The remaining Civil Defence functions which were formerly exercisable by the Minister of Health are now the responsibility of the Minister of Housing and Local Government. The section on Foods and Drugs refers to the new powers vested in a Medical Officer of Health by the Milk and Dairies Regulations, 1949, whereby, if he has evidence that any person is suffering from a disease caused by the consumption of milk, or that milk is infected with any disease communicable to man, he may require the heat treatment of the milk before sale. During the two years up to September 30, 1951, 594 notices were issued by medical officers of health of which 431 related to milk infection or suspected to be infected, with tuberculosis.

The report is accompanied by forty appendices containing much statistical information relating to the various divisions of the health service.

WEEKLY NOTES OF CASES

COURT OF APPEAL

MIDDLESEX COUNTY COUNCIL *v.* MINISTER OF LOCAL GOVERNMENT AND PLANNING AND ANOTHER

(Before Somervell, Jenkins and Hodson, L.JJ.)

October 3, 6, 1952

Compulsory Purchase—Land the property of local authority—Special Parliamentary procedure—Material date of ownership by local authority—Acquisition of Land (Authorization Procedure) Act, 1946 (9 *and* 10 *Geo.* 6, *c.* 49), *sch.* 1, *Part* III, *para.* 9.

On January 21, 1949, a borough council made an order for the compulsory purchase of 123 acres of land for use as a cemetery. On February 22, 1949, within the time specified for objections, objection to the order was made by the county council within whose area the land in question was. The borough council submitted the order to the Minister of Health for confirmation in accordance with the provisions of s. 1 (1) of, and sch. 1, para. 1, to, the Acquisition of Land (Authorization Procedure) Act, 1946, and the Minister, in view of the objection, ordered an inquiry to be held. On November 7, 1949, two days before the inquiry began, the county council purchased by agreement with the owner the land comprised in the order. On April 18, 1950, the Minister confirmed the order. On an application by the county council to quash the order, on the ground that, as the order authorized the purchase of land which was the property of a local authority, under para. 9 of sch. 1 to the Act it was subject to special Parliamentary procedure,

Held : for a case to fall within para. 9 the land must be the property of the local authority (*per* SOMERVELL, L.J.) at the time when that authority makes an objection to the order under para. 3 (1) of the schedule, or (*per* JENKINS, L.J.) on the day immediately following the expiration of the period within which objections must be made ; on neither of those dates were the county council the owners of the land ; and, therefore, the order by the borough council was not subject to special Parliamentary procedure and the Minister had jurisdiction to confirm it.

Marriott v. *Minister of Health* (1936) (100 J.P. 432) distinguished.

Decision of ORMEROD, J. (1951) (115 J.P. 539), reversed.

Counsel : *Sir Lynn Ungoed-Thomas, Q.C.*, and *J. P. Ashworth* for the Minister of Local Government and Planning ; *Rowe, Q.C., Squibb*, and *W. J. Glover* for the borough council ; *H. B. Williams, Q.C.*, and *J. R. Willis* for the county council.

Solicitors : *Solicitor to Ministry of Housing and Local Government* ; *H. D. Clark* ; *C. W. Radcliffe*.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Finnemore and McNair, JJ.)

REG. *v.* PEARCE

October 13, 1952

Criminal Law—Sentence—Corrective training—" Offence punishable with imprisonment for . . . two years or more "—Attempt—Attempting to take and drive away motor vehicle without owner's consent—Maximum sentence for substantive offence twelve months' imprisonment—Criminal Justice Act, 1948 (11 *and* 12 *Geo.* 6, *c.* 58), *s.* 21 (1) (*a*).

REFERENCE by Home Secretary under s. 19 (*a*) of the Criminal Appeal Act, 1907.

The appellant was convicted at London Sessions in February, 1951, of attempting to take and drive away a motor-car without the owner's consent. Previous convictions within s. 21 (1) (*b*) of the Criminal Justice Act, 1948, and service of notices under s. 23 (1) having been proved, he was sentenced to three years' corrective training. The maximum punishment for the offence of taking and driving away a motor-car without the owner's consent is, under the Road Traffic Act, 1930, s. 28 (1) (*b*), twelve months' imprisonment. The appellant appealed to the Court of Criminal Appeal against conviction and the appeal was dismissed, an appeal against sentence being abandoned by him. On the appellant's petition, the Home Secretary now referred to the court the question whether the appellant was liable to be sentenced to corrective training.

Held, that in the case of an attempt, even although such attempt was technically a common law misdemeanour rendering the offender liable to imprisonment for an unlimited term, it was not right that the offender should receive a longer sentence than he could have received if he had been convicted of the full offence. An attempt to commit an offence for which the maximum punishment, in the case of the full offence, was twelve months' imprisonment, should not be regarded as an " offence punishable with imprisonment for . . . two years or more " within the meaning of s. 21 (1) (*a*) of the Criminal Justice Act, 1948, so as to render the offender liable to corrective training. The appellant should not have received a sentence of more than twelve months' imprisonment and the court would order his immediate discharge.

No counsel appeared.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Finnemore and McNair, JJ.)

HOLLAND *v.* PERRY

October 8 and 14, 1952

Motor Vehicle—Excise duty—Unlicensed vehicle used on road—Minimum penalty—Vehicles (Excise) Act, 1949 (12, 13 *and* 14 *Geo.* 6, *c.* 89), *s.* 15 (1) (*b*).

CASE STATED by Surrey justices.

At a court of summary jurisdiction, the respondent, Dudley Thomas Perry, pleaded Guilty to an information preferred against him by the appellant, Holland, on behalf of Her Majesty's Customs and Excise, charging the respondent with unlawfully using an unlicensed motor vehicle on a public road in December, 1951, contrary to s. 15 (1) of the Vehicles (Excise) Act, 1949. There was no evidence that the vehicle was used on any other day in 1951, and the annual duty on the vehicle, assessed in accordance with the Act, was £30. The justices were of opinion that the maximum penalty which they were empowered to impose on the respondent under s. 15 (1) of the

Act of 1949 was three times the amount of duty chargeable in respect of the vehicle for the last quarter of the year, namely, three times £8 5*s*., which amounted to £24 15*s*., and, in exercise of their discretionary power under s. 78 of the Excise Management Act, 1827, to mitigate the penalty, they imposed a penalty of £12. They rejected the contention of the prosecution that they were entitled to impose a maximum penalty of £90, being three times the annual duty payable on the vehicle, and that the smallest penalty which they could impose if they mitigated it in accordance with the Excise Management Act, 1827, would be one quarter of that amount—namely, £22 10*s*.

Held, on the construction of ss. 1, 5, 11 and 15 (1) (*b*) of the Vehicles (Excise) Act, 1949, a person found using an unlicensed vehicle was *prima facie* liable to a penalty of three times the annual excise duty, but, if he had taken advantage of s. 11 and had taken out a licence for part of the year and paid duty accordingly, the duty chargeable in respect of the vehicle would only be so much of the annual duty as had not been paid. The burden rested on a person who had paid duty for part of the year to prove it, and as the respondent had given no evidence, he was liable to a penalty of three times the full duty, namely, £90, and the minimum penalty which the justices were entitled to impose, if they mitigated it in accordance with the Act of 1827, was £22 10*s*. The case must be remitted to the justices with an intimation to that effect. The same result would apply also in the case of a vehicle acquired by a purchaser during a year.

Counsel: *J. P. Askworth* for the appellant. The respondent did not appear.

Solicitor: *Treasury Solicitor*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

REG. *v.* CLYDE T. WILSON, ESQ. (METROPOLITAN MAGISTRATE).
Ex parte PEREIRA
October 8, 1952

Bastardy—Child born abroad to mother domiciled abroad—Jurisdiction to make affiliation order—Maintenance Orders Act, 1950 (14 *Geo*. 6, *c*. 37), *s*. 27 (2).

APPLICATION for order of *mandamus*.

The applicant, Pereira, applied to Mr. Clyde Wilson, the metropolitan magistrate sitting at the South Western Magistrate's Court, for the issue of a bastardy summons against one K whom the applicant alleged to be the father of a bastard child born to her. The child was born at Gibraltar and at the time of the birth the applicant was domiciled at Gibraltar, and on those grounds, following the decision in *Tetau* v. *O'Dea* (1950) (114 J.P. 499), the magistrate refused to issue the summons. The applicant obtained leave to apply for an order of *mandamus* directing the magistrate to issue the summons.

Held, that the magistrate was right, as the decision in *Tetau* v. *O'Dea* (*supra*) that, though the mere fact that the child of a mother domiciled in this country was born abroad did not necessarily bar proceedings in bastardy, the fact that at the time of the birth the mother was domiciled in another jurisdiction was a bar to such proceedings was in no way affected by the provisions of the Maintenance Orders Act, 1950, s. 27 (2).

Counsel: *Vowden* for the applicant; *D. J. L. Fitzgerald* for the respondent magistrate.

Solicitors: *R. W. Platt*; *T. D. Jones & Co.*, for *George Clough & Willis*, Bury.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 88.

A SMUGGLED CAR

On August 11, 1952, two men aged forty-one and twenty-six respectively, were charged with being knowingly concerned in dealing with certain uncustomed goods, *viz.*: a Morris 10 *h.p.* saloon car with intent to defraud Her Majesty of the Customs duty due thereon, contrary to s. 186 of the Customs Consolidation Act, 1876.

For the prosecution, it was stated that in November, 1950, a car smuggled into England from Ireland was traced by customs officers to Wakefield and seized. When the younger defendant was interviewed by a customs officer, he said that he had got the car from a Dublin firm. It had come over the border with somebody he did not know, and he had collected it in Northern Ireland.

Both defendants pleaded guilty, and it was said on behalf of the older defendant that out of the transaction the defendants had made only £125 profit between them. The police stated that the younger defendant was fined £1,800 (reduced on appeal to £1,500) for a customs offence at Omagh, County Tyrone, last year, and that the older defendant had served a prison sentence at Belfast for receiving stolen goods.

Each defendant was fined £500 and ordered to pay costs of £78 15*s*., and in addition each defendant was sentenced to six months' imprisonment.

The defendants gave notice of appeal against sentence and their appeal was heard by an Appeal Committee of the West Riding of Yorkshire Quarter Sessions on October 10, 1952, when the appeal was allowed and the sentences varied as follows: Older defendant: Fined £500 or in default three months' imprisonment, to be paid at the rate of £20 per month. Younger defendant: Fined £500 or in default three months' imprisonment, to be paid at the rate of £8 per month.

COMMENT

Section 186 of the Act of 1876 creates a large number of offences all designed to prohibit the illegal importation of goods into this country and heavy penalties may be imposed in the case of conviction.

The writer is not aware of the matters urged on behalf of the defendants before the Appeal Committee but it would seem that the younger defendant, whose £1,500 fine imposed last year failed to teach him that customs offences may not be committed with impunity, was fortunate in persuading the Committee to free him from the prison sentence imposed by the Wakefield City Justices.

(The writer is indebted to Mr. Ralph Sweeting, M.A., LL.B., clerk to the Wakefield City Justices, for information in regard to this case.)

R.L.H.

No. 89.

THE TRIALS OF A CONFECTIONER

A married woman carrying on business as a small retail confectioner appeared before the Oxford City Justices recently to answer two summonses. The first alleged that the defendant had made an unauthorized alteration in a ration document contrary to art. 27 (1) (*b*) of the Food Rationing (General Provisions) Order, 1951; the second summons alleged that the defendant, being a person who sold confectionery by retail, had failed to keep an accurate record of all purchases made by her contrary to art. 11 (3) of the Chocolate, Sugar Confectionery and Cocoa Products Order, 1951.

For the prosecution, Mr. T. E. Gardiner, solicitor, of Oxford, to whom the writer is greatly indebted for this report, explained that a trader such as the defendant was entitled to obtain supplies only against the surrender of points allocated to her by the Food Office. For that purpose the year was divided into periods of eight weeks. At the commencement of each period the retailer was supplied by the Food Office with a form P.P. 2, showing her points entitlement for that period. The entitlement was made up of unspent points from the previous period, points represented by coupons cut by the retailer from the customer's ration books and any adjustments for ration changes, etc.

With the form P.P. 2, the retailer was issued with credit slips (P.P. 3) which were in the nature of blank cheques on her points balance. The retailer filled them in for the benefit of the wholesalers who in turn used them to replace their own stocks. Particulars of the credit slips so used by the retailer had to be entered by her on the back of the Form P.P. 2, for the information of the Food Office when that form was returned to them at the end of the period. The credit slips were also eventually returned by the wholesalers to the Food Office which was thus able to check the figures which the retailer had entered on the back of her P.P. 2. The procedure in regard to the credit slips was regulated by the Personal Points Order 1951 No. 858.

The defendant had been issued with a P.P. 2 at the commencement of a period showing an entitlement of 14,100 points, which she was entitled to spend in the period by means of credit slips. At the end of the period defendant returned the form to the Food Office, who noticed that their figure of 14,100 had been altered clumsily to 17,900. The defendant was interviewed, but was unable to offer any satisfactory explanation as to how the figure of her points had been altered by an amount just sufficient to cover the excess spending, and said that she had been through a very busy period and must have made the alteration herself although she could not recollect actually doing so.

In regard to the second charge, it had been found on investigation that defendant had not kept records other than a few of the invoices from her wholesalers.

For the defendant, who pleaded guilty to both charges, it was stated that there was no element of fraud. The defendant had found the points accounting a long and troublesome job, difficult to do, and had in fact fallen asleep in the early hours of the morning trying to reconcile the figures. Defending solicitor produced to the magistrates the Ministry of Food Circular G. 4079, dated March 6, 1952, the effect of which was to invite retailers with expanding businesses to apply for an additional points entitlement, and he maintained that if the defendant had made use of this procedure she would probably have received

additional points, almost sufficient to cover her excess spending, or she would have had to underdraw for another period to balance the deficit. Defendant had worked up the business on her own as her husband was employed elsewhere.

The magistrates imposed a fine of £5 on the first summons, £2 upon the second and ordered defendant to pay £2 2*s.* costs.

COMMENT

Those who have had from time to time to advise retailers carrying on a confectionery business will recognize the story set out above as being one that is repeated time and again all over the country.

It is most unfortunate that so many years after the end of the war small retailers should be compelled to keep track of all the little snippets of paper representing points, and it is much to be hoped that, in the near future, the Minister of Food will be able to record another landmark in his avowed objective of putting himself out of business, by taking confectionery off the ration.

PENALTIES

Leicester City Quarter Sessions—October, 1952—(1) driving a car while under the influence of drink, (2) dangerous driving—fined £500. Disqualified from driving for life. To pay seventy-five guineas costs. Defendant, the forty-three year old wife of a company director, was convicted four years ago of a similar offence and was then fined £25. The car driven by defendant was seen to zig-zag across the road, collide with two stationary cars and continue without stopping.

Salisbury—October, 1952—sending a message of obscene character by telephone—fined £5. Defendant, a twenty-eight year old soldier, went into a call box to be connected with a north of England number. He was told that the charge had increased as it was after 10 *p.m.*, and he made an indecent reply. The 'phone was disconnected, but defendant got through again and repeated the observation which was made to a male operator.

Norfolk Quarter Sessions—September, 1952—(1) stealing money from his employers (four charges), (2) falsification of accounts (four charges)—twelve months' imprisonment. Defendant, a company cashier who handled about £2,000 a week in wages for his fellow employees, asked for 241 outstanding offences to be taken into consideration. Defendant had repaid to his employers £486 which he considered to be the full amount he had taken.

Cardiff—September, 1952—(1) obtaining £3 from the Post Office by means of a forged signature (two charges)—(2) receiving a Post Office Savings Book belonging to another man—fined a total of £10. Defendant, a twenty year old soldier, asked for nine other offences involving £27 to be taken into account. Defendant had been sent to an approved school in 1949 for shop and warehouse breaking; he disclosed voluntarily his offences to a Padre.

Bristol—September, 1952—travelling on the railway without a ticket—fined £3. To pay £1 3*s.* 6*d.* costs. Defendant was found sleeping on a seat in a waiting-room on the station and lied when asked how he had got there. He later offered to pay the fare from Taunton which was due by him amounting to 6*s.* 7*d.* but the offer was refused.

MISCELLANEOUS INFORMATION

PROBATION WITH A CONDITION OF RESIDENCE IN A MENTAL HOSPITAL

Over one hundred magistrates, justices' clerks, probation officers, psychiatrists and social workers attended a conference held by the Howard League for Penal Reform on the subject of "Probation with a Condition of Residence in a Mental Hospital." The chair was taken by Mr. Frank Powell, Stipendiary Magistrate, Clerkenwell Court.

Dr. Lindesay Neustatter, of St. Ebba's Mental Hospital and the Royal Northern Hospital, in opening the discussion, said that psychopathic offenders and many chronic sex offenders were, on the whole, unsuitable for admission to mental hospitals as very little could be done for them in the present state of medical knowledge. He recommended that the East-Hubert Institution, which had been promised, should come into existence as quickly as possible as that would be the only method of dealing with such offenders at present. He stressed, however, that depressed patients were particularly suitable for treatment, and he hoped that the courts would send such patients freely to mental hospitals.

Mrs. Balfour, a Hertfordshire probation officer who followed Dr. Neustatter, said that the experience of some probation officers was that the co-operation between them and some mental hospitals could be improved. She cited as instances that probation officers did not always know when treatment was about to be completed, and might be suddenly faced with the problem of finding accommodation and a job for the probationer. She also thought that probation officers should be included at the case conferences of probationers admitted to mental hospitals.

From the floor came a counter-suggestion that since the after-care of all other patients in mental hospitals was the concern of the hospitals' own psychiatric social workers, it might have an undesirable effect on the probationer if he were treated differently. There was also a difference of opinion between a psychiatrist who maintained all voluntary patients should be informed on arrival of their right to give seventy-two hours' notice to leave the hospital and a probation officer who thought that this might have an unsettling effect on the probationers and that perhaps this information should be given at a more propitious moment.

Mr. Frank Powell probably spoke for many of his colleagues when he said that all magistrates were expected to be psychologists today, for it was often impossible to deal with offenders in the manner provided for by law without studying a psychiatric report.

At the end, the conference passed two resolutions: (*a*) strongly recommending to the authorities that the proposed East-Hubert Institution for the treatment of psychopathic offenders should be set up as quickly as possible; (*b*) that, wherever possible, the doctor who would actually be undertaking the treatment, should be the one to recommend to the court that a probation order with a condition of residence in a mental hospital, should be made.

STATUS OF GERMANY UNDER THE TRADING WITH THE ENEMY ACT

From October 6 Germany ceased to be treated as enemy territory for all purposes of Trading with the Enemy Act and Orders.

This was given effect by a new Board of Trade Order, the Trading with the Enemy (Enemy Territory Cessation) (Germany) Order, 1952 (S.I. 1952 No. 1760).

Although resumption of current trade with Germany was authorized from March 29, 1949 (Statutory Instruments 1949 Nos. 605-7) and the state of war with Germany was formally terminated on July 9, 1951, the effect of reg. 7 of the Defence (Trading with the Enemy) Regulations (Statutory Rules and Orders 1944 No. 1123) made on September 28, 1944, is that areas which at that date were under enemy sovereignty continue to be subject to the provisions of the Trading with the Enemy Act and Orders until the Board of Trade direct otherwise. By virtue of the present Order Germany ceases to be treated as enemy territory for all purposes of the Trading with the Enemy Act and Orders.

This Order does not affect the disposal of any German property in the United Kingdom which may come within the scope of the Distribution of German Enemy Property Act, 1949.

OFFICIAL RECEIVER APPOINTMENTS

The Board of Trade have appointed Mr. John Melville Clarke to be Senior Official Receiver and Mr. Frank Malcolm Collins to be Official Receiver in the Companies (Winding-Up) Department.

These appointments take effect from October 1, 1952.

BOOKS AND PAPERS RECEIVED

Manual of Fire Service Law. By Peter Pain. Supplement No. 1, 1952. Hadleigh, Essex: Thames Bank Publishing Co., Ltd. Price 5*s.* 6*d.*

Legislation for Press, Film and Radio. By Fernand Terrou and Lucien Solal. Unesco publication. H.M. Stationery Office. Price 12*s.* 6*d.*

The Law: Barristers and Solicitors. No. 26 New Series. Central Youth Employment Executive. H.M. Stationery Office. Price 1*s.* net.

Backing horses with legal names
Will only lead to bookmakers' claims.

J.P.C.

REVIEWS

A History of English Law. By Sir William Holdsworth. Vol. XIII. Edited by A. L. Goodhart and H. G. Hanbury. London: Methuen & Co., Ltd. Price 70s. net.

It is now eight years since Sir William Holdsworth's death and with vol. XIII his *History of English Law* has only reached the period of the great Reform Bill. It is difficult to review a single volume in isolation, but perhaps easier with the present volume than with some of its predecessors, in as much as the purely legal history of the first decades of the nineteenth century merges in the general history of those years, a general history which was one of the most formative that England has seen. The protracted French wars and the industrial revolution threw the institutions of the eighteenth century into confusion: amongst them the legal conceptions which had culminated in Blackstone. Bentham would never have acquired the influence he had, but for the state of flux in which he flourished. All legal history from 1793 to 1832 (the space of time covered by the present volume) was coloured by the influence of Bentham and beginning to be strongly tinged with the modern process of enacted law, taking the place of the slow development from precedent to precedent which had marked legal progress from the Restoration onward to the time of Eldon. Inevitably, the present volume contains a good deal of English history and a good deal about Bentham and his immediate followers, besides topics bearing directly upon English law in the more usual sense. Inevitably also (for it was a generation of remarkable men) the volume holds much anecdotage. For the latter as well as for its contribution to scholarship, it is likely to be picked up by the historian as well as by the lawyer.

The general plan of the book is to trace the new political and religious ideas which became prevalent towards the end of the eighteenth century, through such writers as Burke, Paine, and Godwin down to Bentham. There is a long analysis of Bentham's writings, and a criticism of the strong and weak points of his principles, showing how through the radicals on one side and such writers as Wordsworth and Coleridge on the other (with the impact of the latter on the Tory Party) Benthamite principles came to be so widely adopted.

The political and constitutional background from the outbreak of the French Revolution to the death of Pitt is carefully sketched, with particular notice of the results on the law of the controversies ranging round Catholic Emancipation and franchise reform. As is well known, the passing of the Reform Act of 1832 introduced our modern legislative scheme: local government lawyers in particular must realize this, from the frequency with which they still have to refer to the legislation of 1835 and 1837. It was indeed a period of constant agitation for reforms, sometimes occasioned by particular grievances such as Eldon's conduct of the chancellorship, sometimes by *a priori* thinking. Whigs and Tories equally, during the period covered by this volume, made their contributions to reform—although it was the Whig contribution which looked larger at the time. Apart from the constitutional changes, to which the general historian devotes the most attention, there was an immense amount of actual legislation both in regard to industry and commerce and in the field of public law; all this is very fully sketched.

An unusually ample table of contents (which is partly historical, and corresponds broadly to the treatment page by page of the subjects covered by the book) lends peculiar value to the present volume, since by looking through it one can pick out persons or movements which it is desired to study. There is, too, a table of statutes, though this would be more useful if the publishers expanded it so as to give the statutes the short titles afterwards assigned to them. (A list of statutes by regnal years conveys nothing to the ordinary reader). There is also a table of cases: here again, we think it would be well if dates were added even though it may be considered in a work of this class that fuller references are not needed, of the sort that would be given in the better type of purely legal text book.

Of particular interest to the legal reader is the chapter on the Law Reports, showing how the haphazard methods of the eighteenth century gave place (though gradually) to the processes, and also to the multiplication of reports, of the nineteenth and twentieth centuries. There is also an attractive chapter upon the literature of the common law, and there are useful tables of chief justices and other lawyers—with many anecdotes concerning individuals. This may prove itself the feature of most interest to the general reader, since it humanizes the story of legal development through this period of unrest.

Seventy shillings may be considered a high price for a book which (apart from indexes and lists) covers less than seven hundred pages, but the learning which has gone to its composition is not capable of being priced. No legal library and no important general library will in future be complete, unless the full set of *Holdsworth's History of English Law*, when eventually finished, is included. It is, too, a work which might well find a place in the private library of every scholar who is either a lawyer or an historian, since English law is peculiarly a subject to which the historical approach is the most illuminating.

The British Cabinet System. By A. B. Keith. Second Edition by N. H. Gibbs. London: Stevens & Sons, Ltd. 1952. Price 37s. 6d. net.

The late Professor Berriedale Keith had the advantage over most academic writers, that he had for many years served the Crown in one of the major departments in Whitehall, where he could watch the day to day work of the constitution, and appraise the gradual changes in its methods. The main structure of his book, which appeared just before the war, has been preserved in the new edition, brought out by Mr. Gibbs, who is University lecturer in modern history at Oxford. This is, on the whole, a happy combination of experience, although a good deal of re-writing has been needed to cope with developments occurring during the second world war and in the highly formative period which followed it. Some material included by Mr. Keith on the subject of departmental work of Ministers has been omitted, the present editor's view being that his function is to explain the work of the Cabinet in its corporate capacity. The historical matter which Keith printed in the book itself, on Cabinets from William IV onwards, has been put in an appendix, and the original text relating to the dismissal of Ministers has been re-written and modified.

The work begins with a general note upon the development of Cabinet government and the formal method of bringing a Cabinet into existence. The working of the Cabinet system is fully explained, as are the relations of the Cabinet to Parliament and to the Crown. In as much as these relations are constantly changing, it must to some extent be a matter of opinion, whether a particular writer has chosen his instances happily. Among ministerial resignations, it is curious to find no mention of that by Sir Oswald Mosley, as a protest against what he regarded as the then Government's subservience to financial interests and its failure to formulate a positive policy for employment. True, Sir Oswald was outside the Cabinet, and Mr. Gibbs may therefore regard the resignation as outside his scope, but the outgoing Minister's resignation speech was regarded at the time in parliamentary circles as the most notable of modern times. We should also have thought something might have been made of the resignations of Mr. J. H. Thomas and Mr. Dalton from Cabinet office: the latter was followed by a return at a very early date (though not to the Exchequer, which had been forfeited by the Minister's indiscretions), while the forfeiture of office by Mr. Thomas was the end of his career. Perhaps the book went to press too soon for mention of the very recent brush between Mr. Attlee and Mr. Bevan, upon disclosure of Cabinet discussions: this episode may well lead to fresh consideration of what constitutes orthodox behaviour in that matter. It would be too much, in a country like our own, to expect that any writer upon public affairs, even a University lecturer, will be free from preconceived ideas, but in some matters, for example the resignation of Mr. Eden in 1938, the present editor seems to show a bias which hardly strikes us as historical; what he there says about British obligations in regard to sanctions begs a most arguable question, and there are other expressions of opinion upon the action of governments or of past Ministers which are (to say the least) open to some question. It is a good book, with solid merits derived from its new editor as well as from his predecessor. With some experience of using the first edition and its rivals, in tutorial work, we should say it is the best book upon its subject. But the lecturer or tutor who puts it before his pupils will do well to warn them that modern political history is in its nature disputable.

Pressman's Guide to Courts & Local Government. Edited by L. C. J. McNae. London: National Union of Journalists, 1952. Price 2s. 9d., including postage.

This is an unpretentious little publication which promises to be extremely useful to those for whom it is intended. It conveys in nutshell form much of the information about the courts and about local authorities in England and Wales, which the newspaper reporter should assimulate so thoroughly that he has it at his finger's ends. Much of the information given will, to our own readers, seem superfluous, but it must be remembered that reporters either in court or at meetings of local authorities are not (apart from members of the Bar who compile the law reports) professionally skilled in the business which the court or local authority is handling. We wish the young reporter had been exhorted to state the charge precisely, in proceedings before magistrates, instead of talking of a "grave offence", a "serious charge", and so forth—which can be maddening to the editor of a legal journal who wishes to know what magistrates are doing—but most of the exasperating errors which the lawyer constantly

finds in the lay press would be avoided if editors insisted upon the purchase and perusal by their staffs of a booklet such as this. It is interesting to find a short note headed "How to handle crime stories" which will put the reporter or sub-editor on his guard against some risks of his occupation, such as that of an action for damages or being brought before the court on an allegation of contempt. So also in regard to local government, there is a useful warning about the danger of publishing defamatory matter. We have found the booklet interesting and suggestive, and those for whom it is written will (we think) find it valuable and instructive.

PERSONALIA

APPOINTMENTS

Capt. T. M. Brownrigg, R.N. (Retd.) has been appointed general manager of the Bracknell Development Corporation.

Mr. William McIntyre, town clerk of Bridgnorth, has been appointed clerk to the Bredbury and Romiley U.D.C. Mr. McIntyre went to Bridgnorth seven years ago having previously been temporary town clerk at Ludlow.

Mr. Ian Drummond, deputy town clerk of Dudley for the past six years, has been appointed to a similar position with the East Ham corporation. Mr. Drummond was previously assistant solicitor to Wolverhampton corporation.

Mr. David Jackson, LL.B., assistant solicitor to West Bromwich coporation, has been appointed assistant solicitor to the Leicester corporation.

RETIREMENT

Sir Percy Barter, C.B., chairman of the board of control, Ministry of Health, has retired after forty-two years' service. Mr. I. F. Armer, C.B., M.C., deputy secretary of the Ministry has been appointed in succession, in addition to his present office.

OBITUARY

Dr. W. E. St.L. Finny, High Steward of Kingston-on-Thames, died on October 10 at the age of eighty-eight. He was a member of Kingston town council for fifty years, a freeman of the borough and seven times mayor. He also served on the Surrey county council. He was a barrister of the Inner Temple but never practised at the Bar.

Alderman Harry Cropper, O.B.E., J.P., died at Chesterfield on October 6 at the age of seventy. Mr. Cropper was chairman of the Chesterfield borough justices, the borough magistrates' courts' committee, and licensing committee and the compensation authority. He was placed on the borough Commission in 1920, was mayor of the borough 1925-27 and had been a county justice for twenty-five years. In 1951 he was presented with the freedom of the borough, having then been a member of the town council for forty years and chairman of the education committee for twenty years.

OIL POLLUTION OF BEACHES

Unfortunately of recent years, the nuisance—appalling in some localities—of pollution by oil on the beaches of this country has become so bad and so widespread that even the most publicity minded of the seaside resorts (normally reluctant to advertise such matters) have been complaining. Public opinion has been aroused on the subject, and the Minister of Transport has recently announced the setting up of a small committee to consider the problem and suggestions for its solution. In the meantime it was thought that it might not be out of place to discuss the existing law on the subject, contained in the Oil in Navigable Waters Act, 1922, with particular reference to the powers of local authorities in respect thereof.

Section 1 of the Act provides that it shall be an offence to discharge or allow to escape, whether directly or indirectly, into any waters to which the Act applies, any oil (this term means oil of any description, and includes spirit produced from oil and oil mixed with water, and *see* also s. 4 of the Act) from any vessel (*i.e.*, any ship or boat, or other description of vessel used in navigation) or from any place on land or from any apparatus used for the purpose of transferring oil from or to any other vessel or to or from any place. This provision applies subject to the following defences or exceptions:

(*a*) In the case of a vessel, it is a defence to prove that the escape of oil was due to, or that it was necessary to discharge the oil by reason of, the vessel being in collision or the happening to the vessel of some damage or accident, and also (in the case of an escape of oil) that all reasonable means were taken by the master to prevent the escape; (*b*) In other cases, and where the proceedings are taken in respect of an escape of oil, it is a defence to prove that all reasonable means were taken by the defendant to prevent the escape; (*c*) The section does not apply to ballast water from a vessel in which petroleum spirit has been carried, provided it is discharged in accordance with conditions laid down by a harbour authority; (*d*) The Act only applies to "the territorial waters of Great Britain and Northern Ireland and the waters of harbours therein"; the sea outside the "three mile limit" from the shore does not, therefore, come within the Act;

(*e*) Foreign ships can be brought within the Act (assuming that a discharge, etc., of oil can be proved) only in respect of an offence committed within a harbour, as the jurisdiction of the English courts does not extend to territorial waters in respect of criminal offences at all, at common law (*R.* v. *Keyn* (1876), 2 Ex D. 63); the Territorial Waters Jurisdiction Act, 1878, extends such jurisdiction only to offences triable on indictment, and offences against s. 1 of the 1922 Act are punishable on summary conviction only. A case was recently brought successfully against the master of a Scandinavian vessel, in respect of an escape of oil through faulty equipment, whilst in harbour at Southampton.

Any local authority may request the Ministry of Transport to inspect vessels within territorial waters and examine the measures adopted to prevent the escape of oil, and similar action may be taken in respect of premises adjoining territorial waters from which it is suspected that oil is escaping or has escaped. In practice, it seems that an authority troubled with a deposit of oil on the foreshore within their jurisdiction, should notify the local Officer of H.M. Coastguard, and that officer will then endeavour to investigate the source of the pollution. The practical difficulties are, of course, enormous—the "guilty" ship has to be identified, and then it has to be established that the discharge of the oil took place within territorial waters, and even then, before an offender can be brought before the court, he must be within the jurisdiction of the court (the normal time limit of six months under the Summary Jurisdiction Acts for the commencement of proceedings, is extended, where the vessel has left the country before the expiration of those six months, for a further period of two months next after the date on which the master first returns to the country). Moreover, if the offending oil has come from a ship breaking up on the sea bed after shipwreck, there is no offence, and no one seems to be responsible to secure an abatement of the escape of the oil.

Consequential provisions under the Act include a prohibition on the bulk transfer of oil between sunset and sunrise in any harbour, unless prior notice so to do has been given to the harbour master concerned. Records must be kept of all operations in connexion with the transfer in bulk of oil to and from any vessel, and these records are open to inspection by the Ministry of Transport.

Legal proceedings may be instituted under the Act in the case of an offence committed in or in relation to the waters of a harbour, only by the harbour authority, and in other cases only by persons authorized by the Minister of Transport or the Minister of Agriculture and Fisheries, or by the Ministry of Commerce for Northern Ireland—the Minister of Agriculture

and Fisheries has authorized all local fisheries committees and fishery boards so to prosecute (*see* Oil in Navigable Waters (Proceedings by River Boards) Directions, 1950, S.I. 1950, No. 286). This fact of there being only two, but two different, classes of authorities charged with enforcement duties under the Act further complicates the commencement of proceedings; not only must it be established that the particular discharge took place from a named ship within territorial waters—it must also be proved that the discharge took place within a particular harbour, or outside any harbour, according to the identity of the prosecuting authority.

Local fisheries committees are (outside the harbours) the normal enforcement authorities, although coastguards have been instructed to carry out some of the investigations. Fisheries committees, with their protection vessels, have some of the means (normally quite inadequate for present purposes) for detecting and preventing offences, but their primary concern is with fish, and not with the cleanliness of the bathing beaches which are often the most important amenity of the seaside resorts. The powers of the "maritime authority", to use an expression hallowed by the Coast Protection Act, 1949, do not extend to enable them to initiate proceedings themselves (except in respect of their harbour, if any), and all they can do under the Act is to request other bodies to take action, in a matter which those other bodies will not always view through their spectacles.

One section of the Act might, in some circumstances, be of use to the holiday resort aggrieved by a deposit of oil, on which the authority may have incurred expense in cleaning the beach. Section 5 provides that any fine imposed in respect of an illegal discharge of oil, may, by order of the court, be directed to be paid to any person for the purpose of being applied by him in or towards meeting expenses incurred or to be incurred in the removal of the oil. The maximum fine that may be imposed under the Act is, however, £100, and the amount of damage caused by a discharge in respect of which it has proved possible to establish a case, will normally greatly exceed that amount in value.

The Act as a whole is really virtually unworkable, except in the most flagrant and obvious cases, but certainly the Minister's committee will not find their task of recommending more effective legislation an easy one. One of the most difficult aspects of the problem is undoubtedly the need to obtain international agreement; at present we can only await the committee's report, and take some satisfaction from the fact that the present interest in the topic has been very largely inspired by local authorities.

J.F.G.

MANORS AND CUSTOMS

Preparations for next year's Coronation have given rise to a spate of correspondence in the press, where learned writers have recommended the revival of traditional observances of venerable antiquity. Many of these observances stem directly from feudal times, when the great lords held their lands from the Monarch, doing him homage in return, and by the process of subinfeudation creating mesne lordships in favour of their knights and followers.

Until the abolition, in 1660, of the system of tenure known as knight-service the lord was entitled to claim from his tenants three "feudal aids" which have a delightfully antique flavour. These were the aids of ransom from imprisonment, for making his eldest son a knight, and for providing his eldest daughter with a dowry. In addition the lord enjoyed the right of wardship over a deceased tenant's infant heir, whom he was privileged to give in marriage, subject to a monetary penalty in the event of the match being rejected.

Lower in the feudal scale the copyhold system involved many manorial incidents, a few of which survive to this very day, though the majority were swept away, under the provisions of the Birkenhead legislation, by 1935. Relics of the past are still preserved in abstract and deed, and many a client has noted with surprise that his house and garden (perhaps in some thickly populated urban area) remain subject to the lord's right of sporting, or his privileges in respect of markets and fairs.

If these obligations seem strange to us today, it is because the idea of freedom in personal and family affairs is deeply rooted in the English character, and the transition from feudalism to individualism has been gradual and continuous for hundreds of years. In many parts of France, on the other hand, the system lasted well into the eighteenth century, and the resistance of the nobility to reform was one of the root-causes of the Revolution of 1789. Every manor was virtually a little state in itself; it had its own court and security-organization, and the lord had virtually absolute power over his vassals. It is not surprising that the rigidity of the system, and the tyranny of these petty autocrats, on the one hand, and the expansion of rationalist thought and scientific research, on the other, produced a clash which led to the Declaration of the Rights of Man, the fall of the Monarchy and the establishment of the First Republic.

It is interesting to recall that this system of manorial rights and feudal dues, dry and forbidding though it may seem to students, forms the subject of two of the greatest works of art that the European genius has produced. In the realm of drama the apostle of the eighteenth-century Age of Reason was Pierre-Augustin Caron de Beaumarchais, whose career was astonishing even for those adventurous times. Born in 1732, the son of a Parisian watchmaker, his *flair* for mechanical invention gained him admission to the Académie des Sciences at the age of twenty-two. During the next thirty years of his life he became, in turn, music-master in the royal household, financier, politician, diplomat and dramatist. In 1774 he was confidential agent and unofficial ambassador for Louis XVI in England and Holland (where seventeen years later he was to serve the French Republic in a similar capacity). In 1776 he was engaged in exporting munitions to assist the revolt of the American Colonies against the British Crown—a precursor of Marshall Aid, but in reverse. Caught up in the prevailing political controversies of the time, his social antipathies were sharpened by a ruinous series of lawsuits, which dragged on for eight years owing to the hostility and corruption of the royal judges.

In 1775 he produced his play *Le Barbier de Séville*. Though the scene was laid in Spain, its bitter satire was so clearly directed at the French social system that it was banned for two years before it could be played. Its great popularity induced Beaumarchais to write a sequel, and in 1778 he completed *Le Mariage de Figaro*. King, Government, Judges and the Church alike were scandalized, and it was not until six years later that the play secured a public performance at the Théâtre Français. This production acted like a torch on inflammable material. There were wild scenes of popular enthusiasm, night after night, for sixty-eight consecutive performances.

Not content with this *succès de scandale*, Beaumarchais published the play the following year with a Preface full of scathing irony. He castigates the nobility, he confounds the censors, he sneers at the dignitaries of the Church, he rebukes the Judges, and does not spare the King himself. Bernard Shaw's Preface to *Mrs. Warren's Profession* (which also suffered an eight years' ban) owes much to Beaumarchais' influence.

The play itself, witty and light-hearted in style, is a scathing exposure of the abuse of aristocratic privilege and a satirical attack upon the established order of morality in Church and State. The Count Almaviva has recently proclaimed his conversion to reformist ideals and has announced the voluntary abolition of certain of his feudal privileges as Lord of the Manor. The most important of these *droits de seigneur*, which is referred to again and again, and is really the mainspring of the action, is the so-called *jus primae noctis*—the right to spend, with the affianced bride of any man in his service, a night of love before her wedding. Having ostensibly abolished this unedifying privilege, the Count is bent on securing from the pretty maid, Susanna, the right he has too hastily renounced, by means of a secret intrigue in which the pander and intermediary is his Chaplain, Don Basilio. His discomfiture and humiliation are brought about by the combined wits of his own wife, the Countess, the valet Figaro (Susanna's intended spouse) and Susanna herself. The irony is accentuated by the familiarity between Figaro and the Countess, on the one hand and, on the other, by her affection—a little more than maternal—for Cherubino, the handsome young page of the household.

The effect of such a story, spiced with wit and barbed with shafts of the most savage satire, dramatically represented on the public stage, can well be imagined in the explosive atmosphere of the Paris of 1784. There were immediate repercussions all over Europe. In distant Vienna, the birthplace of the French Queen Marie Antoinette, the Emperor issued an order strictly forbidding the performance of this scandalous work. This difficulty did not deter the mischievously witty Lorenzo da Ponte, librettist to several famous composers at the Imperial Court, from making a brilliant adaptation, in Italian verse, from Beaumarchais' text, and submitting it to Mozart, who in a few months had completed his musical score. Da Ponte, by his own account, succeeded in winning over the Emperor : " I have omitted whatever might offend the refinement and decorum of an entertainment at which your Majesty presides." However this may be (and a comparison of the two versions reveals only the most obvious Bowdlerizations), his Majesty allowed himself to be persuaded. The opera, produced on May 1, 1786, took musical Europe by storm. From Prague, the following year, Mozart writes to his father : " Here nothing is played, sung or whistled but *Figaro*. No opera is drawing but *Figaro* ; nothing, nothing but *Figaro*."

For witty dialogue, scintillating action, exquisite melody and masterly orchestration *Le Nozze di Figaro* has never been equalled. It is clear that the composer, as well as the librettist, has given himself heart and soul to the revolutionary ideas he has done so much to immortalize.

As to the *jus primae noctis* itself, on which the action of both works turns, an interesting footnote is provided by Professor Edward J. Dent, the great authority on Mozart's operatic works. He has suggested that Beaumarchais was confusing (perhaps deliberately) this alleged custom with the *Maritagium*—the right of the feudal lord to compensation when the daughter of one of his serfs desired to marry a man in the service of another lord—" in view of the fact that by her marriage he lost both her services and the ownership of her offspring." Thus the *droit de seigneur*, which Beaumarchais and Mozart have satirized, links up with the feudal aids and dues, the relics of which, enshrined in our English Property Statutes, still obtrude themselves into our legal studies. Fortunately, or unfortunately, the *jus primae noctis* is not included among the manorial rights preserved by the Law of Property Act, 1925.

A.L.P.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

CRIMINAL RESPONSIBILITY

When Parliament reassembled after the Summer Recess, Mr. H. B. H. Hylton-Foster (York) asked the Secretary of State for the Home Department whether he would recommend the appointment of a Royal Commission to consider what changes might be necessary in the law relating to the criminal responsibility of persons of unsound mind.

The Under-Secretary of State for the Home Department, Sir H. Lucas-Tooth, replying in the negative, said that the Royal Commission on Capital Punishment, appointed in 1949, had been examining those problems and would doubtless include observations on them in their Report, which he understood would be available in the next few months.

BROADMOOR INSTITUTION

Mr. P. F. Remnant (Wokingham) asked the Minister of Health which of the recommendations made by the Scott Henderson inquiry on Broadmoor had now been implemented, and which were still under discussion.

The Minister of Health, Mr. Iain Macleod, replied that eight of the recommendations had been implemented, five were in the course of implementation and two were going forward under Whitley Council procedure.

The Minister circulated details which showed that, among other measures, a siren had been installed, consultations had taken place and a scheme for warning schools was being prepared, a distinctive coloured cloth for overalls had been chosen and would be brought into use as soon as supplies became available, new locks had been fitted to outer doors, and the security rules were being revised.

NEW PRISON BUILDINGS

Mr. T. Reid (Swindon) asked the Secretary of State for the Home Department what steps he was taking to secure priority for the finance, labour and materials needed to build, at once, the prisons required to relieve the overcrowding and the consequent inefficiency in the service.

Sir H. Lucas-Tooth replied that there was no possibility of building at once enough new prisons to relieve the present overcrowding. The programme of new building already approved would start in 1953, and its development would not be retarded by limitations on capital investment. The Minister of Works had undertaken to urge those projects forward as much as he could. In the meantime, some relief was being sought by increasing the number of open institutions.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, October 14

MARINE AND AVIATION INSURANCE (WAR RISKS) BILL, read 2a.

Thursday, October 16

LICENSED PREMISES IN NEW TOWNS BILL, read 1a.

HOUSE OF COMMONS

Wednesday, October 15

LICENSED PREMISES IN NEW TOWNS BILL, read 3a.

Thursday, October 16

INSURANCE CONTRACTS (WAR SETTLEMENT) BILL (LORDS), read 3a.

Friday, October 17

VISITING FORCES BILL (LORDS), read 2a.

NOTICES

The next court of quarter sessions for the city of Winchester will be held at the Guildhall on Friday, November 14, 1952, at 10.45 *a.m.*

The next court of quarter sessions for the borough of Southend-on-Sea will be held on Monday, November 17, 1952.

The next court of quarter sessions for the city of Hereford will be held on November 21, 1952.

No doubt the machinery of an American Presidential Election
Approaches perfection.
But I wonder who first planned it—
And whether he could really understand it ? J.P.C.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Criminal Law—*False pretences and credit by fraud.*

My attention has been recently directed to the distinction to be drawn in certain types of cases between a charge of obtaining a chattel by false pretences contrary to s. 32 of the Larceny Act, 1916, and obtaining credit by fraud contrary to s. 13 of the Debtors Act, 1869.

In a case I have in mind X went into a shop and selected several articles, these articles were then wrapped up into a parcel and X was informed of the total price for all the articles. X then made some excuse for not having any money at that precise moment but said "It will be all right." Because of this statement and because of X's general appearance and demeanour X was permitted to take away the articles. X never went back to the shop to pay the bill. The question arises with what offence should X be charged?

It is well established that a "false pretence" must be as to an existing fact; a representation as to the future or a statement of intention is not a "false pretence" within the meaning of the criminal law. No question of proceeding under s. 32 of the Larceny Act can therefore arise on the above facts, but is s. 13 of the Debtors Act appropriate? It appears from *R.* v. *Cosnett* (1901) 20 Cox 6; 65 J.P. 472, that a distinction must be drawn between the obtaining of credit and the obtaining of chattels since in the former it is actionable if motivated by any fraud, whereas in the latter it is actionable only if the fraud constitutes "false pretences." In what cases is the "obtaining" one of credit or one of chattels is therefore a material question. Applying this question to the above facts the point is, did the fraud alleged result in the obtaining of credit as to the payment for the articles or did it motivate the handing over of the articles themselves?

To my mind s. 13 of the Debtors Act goes to the type of case where, for instance, a night's lodging is obtained or work is carried out, in each case without payment being demanded and made owing to the fraudulent statement made by the offender. These examples are not conclusive of course. It is urged upon me, however, that there may be cases where an indictment can be drawn either under s. 32 or s. 13 and my attention has also been drawn to *R.* v. *Peters* (1886) 16 Q.B.D. 636, a case on "obtaining credit" within 46 & 47 Vict. c. 52, s. 31, but the case of *R.* v. *Coyne* (1905) 69 J.P. 151 seems to conflict with *R.* v. *Peters*.

It seems to me that the words "under false pretences . . ." in s. 13 (1) of the Debtors Act relate to the words "he has obtained credit" and not to the words "in incurring any debt or liability" and the true test is to ascertain what part of the transaction was affected by the fraud. On the facts stated above if the court were satisfied that the sale of the articles was completed and the fraud went as to the method of payment (*i.e.* the obtaining of credit) and indictment under s. 13 would be correct. However, if the court held that fraud actuated the handing over of the articles s. 13 seems inappropriate.

It is, I think, clear that if it were not for the very technical interpretation of the words "false pretences" in the criminal law prosecutors would not hesitate to charge the offender in such cases as those similar to that set out above under s. 32 of the Larceny Act which section clearly envisages that the pretence motivated the handing over of the property. The danger to my mind is that in their desire to bring the offender before the court in such cases the offender is being charged under a section which is inappropriate.

I shall be obliged if you will kindly let me have the benefit of your opinion on the meaning of "obtaining credit" and the distinction between s. 32 and s. 13 in the type of case to which I have referred and generally on the matter. SALO.

Answer.

We think the test suggested in the question is correct. If a false pretence (as to an existing fact, of course) lead to the handing over of property the charge would be under the Larceny Act. If, however, a false pretence or other fraud (as to which *see R.* v. *Laker* (1949) 113 J.P.N. 776) lead to the grant of credit the appropriate charge is under the Debtors Act, and this certainly appears to be the proper charge in the present instance.

There can be cases where property is obtained by false pretences, and also credit is obtained by false pretences or other fraud when the question of payment arises. In such cases, there would appear to be no objection to preferring either charge.

Generally we agree with our learned correspondent, who has set out the matter clearly.

2.—Housing (Rural Workers) Acts, 1926 to 1942—*Increase of rent.*

Grants were made by the county council in 1939, under the above Acts, in respect of two cottages, the rents of which were fixed at 4*s.* and 3*s.* per week inclusive of rates, respectively. "Normal agricultural rent" was fixed by the council at that time at £7 16*s. per annum*, inclusive of rates. These rents of 4*s.* and 3*s.* were not the maximum permissible rents under the Acts, and they were, some years later, on application by the owner, increased to the maximum rents which could have been permitted when the grants were made.

An application has now been made by the owner for a further increase in the rents and I should like to know whether the council have the power to revise the "normal agricultural rent," and increase this figure so as to be more in accordance with present day rents.

Section 3 (1) (*b*) (i) of the Act of 1926, in defining the meaning of "normal agricultural rent" uses the words "the rent which the local authority determines to be the average rent for the time being paid by agricultural workers in the district." Do the words "for the time being" refer only to the time when the grant was made, or do they have the same meaning as "from time to time?"

I shall be glad to know, therefore,

1. Can the council increase the permitted rent by increasing the "normal agricultural rent"? and

2. Can the council increase the permitted rent by the amount of the increase in the rate poundage which has taken place since the rent was fixed? PON.

Answer.

1. No. The normal agricultural rent is to be fixed at the time and no provision is made for revision. The basis on which it is to be fixed is related to existing or recently existing circumstances, with exceptions for special cases, and no provision is made for future alterations except in relation to the circumstances set out in the subsection: *cp. Black Mill Ltd.* v. *Straker* [1949] 2 All E.R. 919.

2. Yes. It is only the rent which is limited.

3.—Landlord and Tenant—*Notice to quit—Signature by council's solicitors—Housing Act*, 1936, *s.* 164 (2).

Proceedings before justices are pending in which the notice to quit was served on behalf of a local authority by a firm of solicitors. The house is a council house erected since 1945 under the Housing Act, 1936. Having regard to the decision in *Becker* v. *Crosby Corporation* [1952] 1 All E.R. 1350; 116 J.P. 363, can the justices issue their warrant, assuming the only matter in question to be the validity of the notice to quit? If the decision in *Becker v. Crosby Corporation, supra*, renders the notice invalid, does this not also apply to proceedings in the county court? PORR.

Answer.

The notice is invalid by reason of s. 164 (2) of the Housing Act, 1936, unless the person who signed it was appointed as the deputy of the clerk and the invalidity of the notice affects proceedings before the justices or the county court. The warrant cannot be issued on an invalid notice to quit.

4.—Licensing—*Supper hours extension—Grant of certificate only at brewster sessions or adjournment thereof.*

I would be obliged if you would kindly let me have your opinion as to whether a supper certificate under s. 3 Licensing Act, 1921, may be issued in respect of licenced premises at a transfer sessions called for the purpose. *Paterson*, 57th edn., at note (*d*) on p. 879 says that the certificate cannot be granted at a transfer sessions but I can find no authority for this, and by s. 7 of the Licensing (Consolidation) Act, 1910, it would appear that providing a transfer sessions is called for the express purpose of considering a supper certificate and providing the statutory notices have been given there would appear to be no objection to granting it at these sessions. If this is not so it would appear that such a certificate can only be granted at the brewster sessions in February or at the adjournment thereof in March. NAN.

Answer.

The power to grant a certificate is contained in s. 3 of the Licensing Act, 1921. Section 12 (1) of the Act enacts that the powers of licensing justices under Part I of the Act (which includes s. 3) are to be exercised at the general annual licensing meeting. Immediately after the Act was passed there was power to grant the certificate at transfer sessions, but this provision is now spent: this was also enacted in s. 12 (1) but is no longer reproduced in *Paterson*.

5.—Magistrates—*Oaths to be taken by the mayor.*

A borough having its own separate commission of the peace has now by virtue of the Justices of the Peace Act, 1949, with effect from October 1 last, become a petty sessional division of the county. Referring to the P.P. 11, "Mayor as ex-officio Justice—Oath"—*Questions & Answers from the Justice of the Peace* 1929-1937, p. 151,

are you still of the opinion, in view of the Justices of the Peace Act, 1949, that a mayor who has recently been appointed should attend at quarter sessions for the county to take the necessary oaths applicable to a county justice and not before two justices of the newly constituted petty sessional division of the county in which he will sit? The first available quarter sessions at which the mayor referred to could qualify will not be held for some six weeks yet. PUGH.

Answer.

The mayor is by virtue of s. 2 (*b*) of the Justices of the Peace Act, 1949, a justice for the county and not a justice of the borough, and it appears that he may take the oath before any two justices of the county in petty sessions; *see* the Home Secretary's letter of January 5, 1926, at 90 J.P.N. 40.

6.—Magistrates—*Practice and procedure—Conditional witnesses when accused makes no statement and does not plead guilty before the magistrates.*

With reference to your remarks in *Notes of the Week* at p. 287, *ante*, it is the practice in this division when the accused pleads guilty or admits the truth of the charge before the examining justice to give a certificate to that effect under the Administration of Justice Act, 1920, and to bind over the witnesses conditionally. They are then not required to attend the trial unless the prosecutor or the accused gives notice subsequently that their attendance is required.

A difficulty, however, arises in cases where the accused has made a full or partial admission to a police officer previous to his appearing before the justices and when he is formally charged by the justices and asked if he has anything to say he either shakes his head or says he has not. The editor of *Stone* at p. 58, note (*e*) and the editor of *Lieck and Morrison's Criminal Justice Act*, 1925, at p. 37 both express the opinion that the words " anything contained in any statement by the accused " are limited to a statement made by him before the examining justices.

While it is agreed that witnesses whose evidence is either formal or unchallenged should not have their time wasted in attending the trial I do not see how they can be bound over conditionally unless the accused makes some statement before the justices, and I assume that the remarks of the Lord Chief Justice and your own are limited to cases where the accused makes some statement before the justices which would entitle them to bind over the witnesses conditionally. I am surprised to learn that the High Court judges say that this power was hardly ever exercised nowadays and if it is agreed that witnesses can only be bound over conditionally on the statement which the accused makes in court, and disregarding anything he has said previously, I think this is the real explanation.

Did the L.C.J. overlook s. 28 (5) (*a*) of the Criminal Justice Act, 1948, when, in giving judgment in the recent case of *R.* v. *Kent Justices, Ex parte Machin* [1952] 1 All E.R. 1123; 116 J.P. 242, he said that when the imprisonment on summary trial exceeds three months the accused may be committed for sentence under s. 29? JOFF.

Answer.

The Criminal Justice Act, 1925, s. 13 (1) authorizes the conditional binding over of witnesses whose attendance at the trial is unnecessary either by reason of any statement of plea by the accused *or* by reason of the evidence of the witness being merely of a formal nature. It is not necessary, in the latter case, that there shall have been any plea or statement by the accused.

With regard to *R.* v. *Kent Justices, Ex parte Machin* we think that as he is reported in [1952] 1 All E.R. at p. 1124 the Lord Chief Justice has not stated the matter too widely. He refers to the amendment to s. 17 of the Act of 1879 made by the sch. 9 of the Act of 1948 as being the reason for the need to inform the accused of his liability to committal for sentence. When that amendment is read it is seen that the need arises only where the accused may be committed for sentence under s. 29 of the 1948 Act, and this section makes it clear that its provisions are applicable only to those cases which are tried summarily under s. 28 (2) of the Act of 1948. We have then to refer to s. 28 (4) of that Act and the matter is complete.

7.—Real Property—*Right reserved from grant—Easement or Licence.*

By a deed of gift executed in 1933 *inter vivos*, A conveyed to the corporation " all that piece or parcel of land known as Blackacre . . . except and reserving unto the grantor the hedge between the piece of land hereby conveyed and the adjoining property known as Whiteacre together with the right for the grantor and all persons authorized by her to have access from Whiteacre aforesaid to Blackacre at all times through a gateway in the said hedge."

A died some years ago and it is believed that her executors sold Whiteacre to B in 1944 who sold to C in 1946. It is not known whether in fact B ever exercised A's right of access to Blackacre. At various times since 1946 C has claimed to exercise the right of access to Blackacre enjoyed by A, but his right to do so has not been accepted by the corporation's advisers, who claim that the right reserved by A was personal to her and died with her and does not run with Whiteacre.

It is realized that the facts are scanty, but your opinion is requested as to whether the wording of the exception and reservation in the deed of gift granted to A a personal licence which did not fall within s. 62 of the Law of Property Act, 1925, or whether these words granted a legal easement which would run with the land benefited. P. ELVED.

Answer.

On the information, the right of access (as distinct from the hedge) appears to be personal to the grantor and persons authorized by her.

8.—Road Traffic Acts—*Lights on vehicles—" Spotlight "—Use otherwise than in conditions of fog or snow—Road Vehicles Lighting Regulations*, 1950, *reg.* 9.

I shall be grateful if you will give your opinion on the following divergent interpretations of reg. 9 of the Road Vehicles Lighting Regulations, 1950, so far as it relates to lights which have bulbs of over seven watts and are under the prescribed height from the ground (which are referred to below as " spotlights "):

1. That except in conditions of fog or whilst snow is falling the proviso to para. (2) of the Regulations makes it an offence to use a " spotlight " irrespective of any other consideration.

2. The sub-para. (iv) of para. (2) enables a " spotlight " to be used in the absence of fog or snow if by the operation of a single switch such light is extinguished and all other headlights are deflected in accordance with sub-para. (iv), or alternatively, if the headlights and " spotlight " are controlled by separate switches, then by using the spotlight only when the other headlights are in the dipped position and properly deflected so that by the operation of one switch the "spotlight " is extinguished and the other headlights remain properly deflected.

The first interpretation is based on the contention that the provision to para. (2) of the Regulations takes " spotlights " out of the provisions of the remainder of the paragraph and creates an offence irrespective of such remainder. The second interpretation is based on the contention that the paragraph must be taken as a whole and that whilst the proviso expressly excludes a " spotlight " from complying with sub-para. (i) of para. (2) and has the effect of preventing its complying with sub-paras. (ii) and (iii) there must also be a breach of sub-para. (iv) for conviction to lie. JUDEX.

Answer.

We think that the view given in para. 2 of the question is the correct one.

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T. CRADDOCK,
Clerk to the Justices.

Law Courts,
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T. A. DOUBLEDAY,
Secretary of the Probation Committee.

The Law Courts,
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R. H. WRIGHT,
Town Clerk.

Council Offices,
Surbiton.

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G. A. WHEATLEY,
Clerk to the Probation Committee.

The Castle,
Winchester.
October 20, 1952.

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A. NORMAN SCHOFIELD,
Town Clerk.

Town Hall,
Watford.
October 15, 1952.

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G. SUTCLIFFE,
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Council House,
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October 17, 1952.

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